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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,465	05/11/2001	Geoffrey S. Strongin	2000.039500/TT3768	6696

23720 7590 01/31/2006

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HOUSTON, TX 77042

EXAMINER

TRAN, ELLEN C

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/853,465	Applicant(s) STRONGIN, GEOFFREY S.	
	Examiner Ellen C. Tran	Art Unit 2134	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

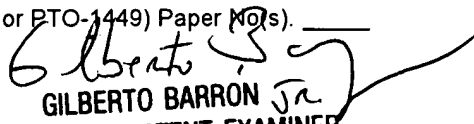
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-103.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

  
**GILBERTO BARRON JR.**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument on page 3, "Applicant respectfully submits that the use of a secret information to protect confidential information is well known. Furthermore, the secret information may take a variety of forms. Support for this position may be found in the references cited by the Examiner. See, e.g., Vu, col. 1, ll. 11-33. Thus, Applicant respectfully submits that the specification does enable the use of a secret. Moreover, Applicant respectfully submits that it is not necessary to set forth particular examples of secrets to particularly point out and distinctly claim the subject matter which Applicant regards as the invention." The Office disagrees with argument, for several reasons. One reason the argument is not relevant, is because unlike the cited references of Vu, the Applicant does not provide any details as to what the secret is. Vu describes the secret as cryptographic keys, see abstract.

In response to applicant's second argument on page 3, "The Examiner also alleges that the specification does not explain what function or uses are performed when retrieving the data from the first location. Applicant respectfully submits that some embodiments of the present invention set forth techniques for accessing data stored in a first location using a secret. The contents and /or the function of the access data are not material to the present invention ... Applicant request that the examiner's rejections of claim 1-103 under 35 U.S.C. 112 first and second paragraphs be withdrawn". The Office disagrees with the argument, the 112 first and second paragraph rejections remain because the applicant is claiming an abstract idea with no support for the purpose of the invention.

In response to applicant's argument on page 4, "However, Applicant respectfully submits that Vu fails to teach or suggest reading a secret from a first location, securing the secret in a secure location different from the first location, and retrieving at least a portion of the data stored in the first location using the secret, as set forth in independent claims". The Office disagrees with argument furthermore the argument does not make sense. The step of removing the token does not change that the secret and data stored in the first location is loaded into the secure operating system, hence the step of retrieving at least a portion of the data stored in the first location has already occurred by loading this information into the SMRAM. Furthermore the token could also still be available and the SMM mode could be initialized at another time see '104 col. 6, lines 6-21 "The cryptographic key and program may also be loaded after the system has already booted, as long as the loading is done in the secure mode, i.e. SMM. Also the cryptographic key and program may be loaded at different times. The program may be loaded during boot time, and the key at a later time. This implementation would be useful for computers which have multiple users and thus multiple keys, wherein all the keys rely on the exact same processing algorithm. The algorithm could be loaded at boot time, and the keys loaded later, as each user request security services".

In response to applicant's argument on page 5, "Applicant also submits that Vu fails to teach or suggest storing a secret within a first location and storing code different from the secret within the first location, where the code is configured to provide access to data stored in the first location." The Office disagrees with argument, as stated above Vu disclosed using the data stored in the first location different from the secret (i.e. the algorithm) to access data stored in the first location when processed in association with the secret see '104 col. 5, lines 30-47 "The SMI initializes the system processor into SMM. Once the processor is in SMM, a software SMI handler invokes the security function at step 22. The security function access the cryptographic key and programs stored in the SMRAM at step 23. The processor executes the requested security processing in the SMM. This processing may include encryption/decryption of documents, processing secret keys for password validation, user authentication, ect." (Note, the step of retrieving at least a portion the data stored in the first location occurs when the SMI call invokes the SMM. The step of retrieving a portion of the data using the secret has the same meaning of retrieving an algorithm and applying a key. Furthermore the data from the first location is loaded into the SMRAM the process of retrieving at least a portion of the data is invoked with SMI interrupt. As mentioned above this process can occur at any time. Finally the data in the first location and the second location are the same).

In response to applicant's second argument on page 5, "Applicant also submits that Vu fails to teach or suggest a first location configured to store code, a secret, and data different from the secret and different from the code, and a master device operable coupled to the first location, wherein the master device is configured to read the secret from the first location and to store the secret in a secure location different from the first location, and wherein the master device is further configured to access the data stored in the first location using the secret". The Office disagrees with argument as previously stated in addition the reference clearly states that algorithms can be loaded into the SMRAM. These algorithms are interpreted to have the same meaning as "data different from the secret and different from the code".